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Attorney for Plaintiff:
BONNIE REGINA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BONNIE REGINA,

Plaintiff,

CASE NO. C07-03881 JCS
Civil Rights

v.

**CONSENT DECREE AND [PROPOSED]
ORDER**

QUEST DIAGNOSTICS, INC.; NDM,
LLC; and DOES 1-25, Inclusive,

Defendants.

CONSENT DECREE AND ORDER

1. Plaintiff BONNIE REGINA filed a Complaint in this action on July 30, 2007, to obtain personal injury damages and to enforce provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et seq., and California civil rights laws against Defendants, QUEST DIAGNOSTICS, INC., NDM, LLC; and DOES 1-25, inclusive, relating to the condition their public accommodations. Plaintiff has alleged that Defendants violated Title III of the ADA and sections 51, 52, 54.1, and 55 of the California Civil Code, and sections 19955 *et seq.*, of the California Health and Safety Code by failing to provide full and equal access to the facilities at 2519 Milvia Street, Berkeley, California.

2. Defendants QUEST DIAGNOSTICS, INC. and NDM, LLC deny the allegations in the Complaint and by entering into this Consent Decree and Order do not admit liability to any of the allegations in Plaintiff's Complaint filed in this action. The parties hereby enter into this Consent Decree and Order for the purpose of resolving this lawsuit without the need for

1 protracted litigation, and without the admission of any liability.
2

3 **JURISDICTION:**

4 3. The parties to this Consent Decree agree that the Court has jurisdiction of this
5 matter pursuant to 28 USC §1331 for alleged violations of the Americans with Disabilities Act
6 of 1990, 42 USC 12101 *et seq.* and pursuant to supplemental jurisdiction for alleged violations
7 of California Health & Safety Code §19955 *et seq.*, including §19959; Title 24 California Code
8 of Regulations; and California Civil Code §§51; 52; 54; 54.1; §54.3; and 55.

9 4. In order to avoid the costs, expense, and uncertainty of protracted litigation, the
10 parties to this Consent Decree agree to entry of this Order to resolve all claims regarding
11 injunctive relief raised in the Complaint filed with this Court. Accordingly, they agree to the
12 entry of this Order without trial or further adjudication of any issues of fact or law concerning
13 plaintiff's claims for injunctive relief.

14 WHEREFORE, the parties to this Consent Decree hereby agree and stipulate to
15 the Court's entry of this Consent Decree and Order, which provides as follows:
16

17 **SETTLEMENT OF INJUNCTIVE RELIEF:**

18 5. This Order shall be a full, complete, and final disposition and settlement of
19 Plaintiff's claims against Defendants for injunctive relief that have arisen out of the subject
20 Complaint. The parties agree that there has been no admission or finding of liability or
21 violation of the ADA and/or California civil rights laws, and this Consent Decree and Order
22 should not be construed as such.

23 6. Defendant Quest Diagnostics, Inc. has vacated the subject premises, and
24 defendant NDM, LLC has withdrawn the property from the public rental market. Therefore,
25 the property will not be used as a public accommodation at this time. Defendant NDM, LLC
26 agrees that if the property is in future used as a public accommodation, it will be brought into
27 full compliance with all access codes, including but not limited to provision of accessible entry,
28 restroom, and parking. Plaintiff BONNIE REGINA and Defendant NDM, LLC agree and

1 stipulate that the corrective work will be performed in compliance with the standards and
 2 specifications for disabled access as set forth in the California Code of Regulations, Title 24-2
 3 and Americans with Disabilities Act Accessibility Guidelines, unless other standards are
 4 specifically agreed to in this Consent Decree and Order.

5
 6 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES, AND COSTS:**

7 7. The parties have not reached an agreement regarding the parties' claims
 8 and cross-claims for damages, attorney fees, litigation expenses and costs. These issues shall
 9 be the subject of further negotiation, litigation, and/or motions to the Court.

10
 11 **ENTIRE CONSENT ORDER:**

12 8. This Consent Decree and Order constitutes the entire agreement between the
 13 signing parties on the matters of injunctive relief, and no other statement, promise, or
 14 agreement, either written or oral, made by any of the parties or agents of any of the parties, that
 15 is not contained in this written Consent Decree and Order, shall be enforceable regarding the
 16 matters of injunctive relief described herein. This Consent Decree and Order applies to
 17 plaintiff's claims for injunctive relief only and does not resolve plaintiff's claims for damages,
 18 attorney fees, litigation expenses and costs, which shall be the subject of further negotiation
 19 and/or litigation.

20
 21 **CONSENT ORDER BINDING ON PARTIES AND SUCCESSORS IN INTEREST:**

22 9. This Consent Decree and Order shall be binding on Plaintiff BONNIE
 23 REGINA; Defendants QUEST DIAGNOSTICS, INC. and NDM, LLC; and any successors in
 24 interest. The parties have a duty to so notify all such successors in interest of the existence and
 25 terms of this Consent Decree and Order during the period of the Court's jurisdiction of this
 26 Consent Decree and Order.

27
 28 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS TO**

INJUNCTIVE RELIEF ONLY:

10. Each of the parties to this Consent Decree understands and agrees that there is a risk and possibility that, subsequent to the execution of this Consent Decree, any or all of them will incur, suffer, or experience some further loss or damage with respect to the Lawsuit which are unknown or unanticipated at the time this Consent Decree is signed. Except for all obligations required in this Consent Decree, the parties intend that this Consent Decree apply to all such further loss with respect to the Lawsuit, except those caused by the parties subsequent to the execution of this Consent Decree. Therefore, except for all obligations required in this Consent Decree, this Consent Decree shall apply to and cover any and all claims, demands, actions and causes of action by the parties to this Consent Decree with respect to the Lawsuit, whether the same are known, unknown or hereafter discovered or ascertained, and the provisions of Section 1542 of the California Civil Code are hereby expressly waived. Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

This waiver applies to the injunctive relief aspects of this action only and does not include resolution of plaintiff's claims for damages, attorney fees, litigation expenses and costs.

11. Except for all obligations required in this Consent Decree, and exclusive of the referenced continuing claims and cross-claims for damages, statutory attorney fees, litigation expenses and costs, each of the parties to this Consent Decree, on behalf of each, their respective agents, representatives, predecessors, successors, heirs, partners and assigns, releases and forever discharges each other Party and all officers, directors, shareholders, subsidiaries, joint venturers, stockholders, partners, parent companies, employees, agents, attorneys, insurance carriers, heirs, predecessors, and representatives of each other Party, from all claims, demands, actions, and causes of action of whatever kind or nature, presently known or unknown, arising out of or in any way connected with the Lawsuit.

1 **TERM OF THE CONSENT DECREE AND ORDER:**

2 12. This Consent Decree and Order shall be in full force and effect for a period of
3 twelve (12) months after the date of entry of this Consent Decree and Order, or until the
4 injunctive relief contemplated by this Order is completed, whichever occurs later. The Court
5 shall retain jurisdiction of this action to enforce provisions of this Order for twelve (12) months
6 after the date of this Consent Decree, or until the injunctive relief contemplated by this Order is
7 completed, whichever occurs later.

8
9 **SEVERABILITY:**

10 13. If any term of this Consent Decree and Order is determined by any court to be
11 unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in
12 full force and effect.

13
14 **SIGNATORIES BIND PARTIES:**

15 14. Signatories on the behalf of the parties represent that they are authorized to bind
16 the parties to this Consent Decree and Order. This Consent Decree and Order may be signed in
17 counterparts and a facsimile signature shall have the same force and effect as an original
18 signature.

19
20 Dated: June 17, 2008

21 /s/ Bonita (Bonnie) Regina
22 Plaintiff BONNIE REGINA

23 Dated: June 12, 2008

24 /s/ Kimbra Lozano
25 Defendant QUEST DIAGNOSTICS, INC.

26 Dated: June 17, 2008

27 /s/ Yochai (Joe) Kidron
28 Defendant NDM, LLC

1 APPROVED AS TO FORM:

2 Dated: June 17, 2008

3 PAUL L. REIN
4 JULIE A. OSTIL
5 ANN M. WINTERMAN
6 LAW OFFICES OF PAUL L. REIN

7 _____/s/ Paul L. Rein_____
8 Attorneys for Plaintiff
9 BONNIE REGINA

10 Dated: June 12, 2008

11 JOSEPH D. MILLER
12 EPSTEIN, BECKER, and GREEN, PC

13 _____/s/ Joseph Miller_____
14 Attorneys for Defendants
15 QUEST DIAGNOSTICS, INC.

16 Dated: June 17, 2008

17 JACK C. PROVINE
18 KATHRYN J. ALLEN
19 SHAPIRO, BUCHMAN, PROVINE, AND
20 PATTON, LLP

21 _____/s/ Jack Provine_____
22 Attorneys for Defendants
23 NDM, LLC

24 **ORDER**

25 Pursuant to stipulation, and for good cause shown, **IT IS SO ORDERED.**

26 Dated:_____

27 _____
28 HON. JOSEPH C. SPERO
U.S. MAGISTRATE JUDGE

Consent Decree and Order:
Case No. C07-03881 JCS